

### **REMARKS**

This paper responds to the Office Action dated April 20, 2005. Claims 25 and 26 are amended. Claims 1-46 are pending in this application.

#### **Information Disclosure Statement**

Applicant filed a Supplemental Information Disclosure Statement ("IDS") on 3 January 2005. The Examiner partially initialed the Form 1449 that accompanied this IDS. Specifically, the documents listed on the third page under the header "Other Documents-Non Patent Literature Documents" were not indicated as considered by the Examiner. Applicant encloses herewith a copy of the initialed Form 1449 for the Examiner's reference and a copy of the stamped returned postcard indicating that the documents were received by the USPTO. Applicant requests that the Examiner consider the documents and return a completely initialed copy of the Form 1449 with the next USPTO communication.

#### **Reservation of the Right to Swear Behind References**

Applicant reserves the right to swear behind any documents which are cited in a rejection under §§ 102(a), 102(e), 103/102(a), and 103/102(e). Statements distinguishing the claimed subject matter over the cited documents are not to be interpreted as admissions that the documents are prior art.

#### **Objections to the Claims**

Claim 26 was objected to due to an informality. Applicant has amended claim 26 to overcome this objection.

#### **§102 Rejection of the Claims**

Claim 1, 15, 25 and 35, and claims Claim 10-14, 30-34, 36-39 and 46 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Goedeke et al. (U.S. Patent No. 6,687,547, "Goedeke"). Applicant respectfully traverses the rejection. To anticipate a claim, a reference must teach every element of the claim.

*Regarding claims 1, and 10-14:*

Applicant cannot find in Goedeke, among other things, any disclosure of a central server coupled to the network and including at least one prescription system for prescribing at least one programmable parameter of a medical device based upon at least one characteristic of a patient, as recited or incorporated into the claims. Goedeke is apparently silent as to a central server coupled to a network. Additionally, while the office action states that Goedeke teaches prescription of the initiation and content of the session to measure physiologic parameters and provide the real-time patient data or an indication that the parameters are acceptable or not (*see* Office Action pg. 3), the cited portions of Goedeke refer to initiation and content of the [communication] session can be prescribed by the health care provider, rather than a prescription system (*see* Goedeke, col. 7, ln. 62-65). In the present application, a central server hosts at least one prescription system for prescribing at least one programmable parameter of a medical device based on at least one characteristic of a patient (*see* page 7, ln. 10-12). The present application further states that by executing a prescription system, the central server is capable of prescribing one or more programmable parameters for a medical device based upon at least one characteristic of a patient (*see* page 7, ln. 15-18). At least for the reason that Goedeke fails to teach all elements recited or incorporated into the contested claims, Applicant respectfully requests reconsideration and allowance of claims 1, and 10-14.

*Regarding claim 15:*

Applicant cannot find in Goedeke, among other things, any disclosure of a central server comprising a network interface ... and at least one prescription system coupled to the network interface, as recited in claim 15. Applicant respectfully requests reconsideration and allowance of claim 15.

*Regarding claims 25, 30-34:*

Applicant cannot find in Goedeke, among other things, any disclosure of a medical device programmer ... comprising a network interface for communicating with a central server over a network, as recited or incorporated into the claims. Applicant respectfully requests reconsideration and allowance of claims 25, and 30-34.

*Regarding claims 35-39, and 46:*

Applicant cannot find in Goedeke, among other things, determining at least one programmable parameter for a medical device based on the at least one characteristic using a prescription system hosted by the central server, as recited or incorporated into the claims. Applicant respectfully requests reconsideration and allowance of claims 35-39, and 46.

§103 Rejection of the Claims

Claims 2, 16, 26 and 40 were rejected, and claims 3-9, 17-24, 27-29 and 41-45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Goedeke et al. (U.S. Patent No. 6,687,547) in view of Haller et al. (U.S. Patent No. 6,804,558, "Haller"). Applicant respectfully traverses the rejections.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *M.P.E.P.* § 2143.03. Claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim. *37 C.F.R.* § 1.75.

Claims 2-9 ultimately depend on base claim 1, claims 16-24 ultimately depend on base claim 15, claims 26-29 ultimately depend on base claim 25, and claims 40-45 ultimately depend on base claim 35. Applicant believes claims 2-9, 16-24, 26-29, and 40-45 are allowable at least for the reason that Goedeke fails to teach or suggest all elements of the base claims. The addition of Haller fails to provide the missing elements.

Also to establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. *M.P.E.P.* § 2143. Haller refers to using a mobile phone or PDA to communicate with an IMD by RF telemetry (Figs. 6A-6C, col. 18, ln. 38-61). Goedeke refers to a device that a patient uses to communicate to an IMD using audio tones (Abstract). Applicant is unable to find any suggestion or motivation to replace the RF telemetry of Haller with the audio telemetry of Goedeke or vice versa.

Applicant respectfully requests reconsideration and allowance of claims 2, 16, 26, 40 and claims 3-9, 17-24, 27-29 and 41-45.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 349-9587 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

JULIO C. SPINELLI ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

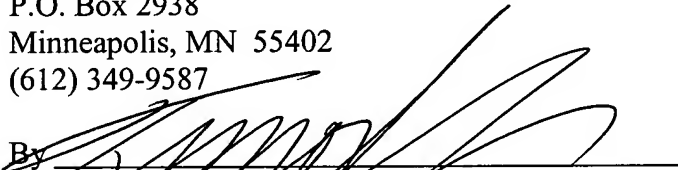
Minneapolis, MN 55402

(612) 349-9587

Date

29 Aug '05

By

  
Timothy B Clise  
Reg. No. 40,957

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Main Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 30 day of August, 2005.

Name

Paula Suchy

Signature

Paula Suchy